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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

HUSSEIN S. HUSSEIN, an individual,  
  
Plaintiff,

v.

UNIVERSITY AND COMMUNITY  
COLLEGE SYSTEM OF NEVADA, et  
al.,

Defendants.

3:04-CV-0455 JCM (RAM)  
3:05-CV-0076 JCM (RAM)

Date: N/A  
Time: N/A

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**ORDER**

Presently before the court is plaintiff's motion to strike (Doc. #446). Defendants filed a response in opposition to plaintiff's motion to strike (Doc. #450), and plaintiff filed a reply to defendants' opposition (Doc. #457).

Defendants filed three motions for summary judgment (Docs. ##391, 392, 393) with numerous attached exhibits on July 9, 2007. In his motion to strike, presently before this court, plaintiff objects to the admission of many of the exhibits on grounds that defendants did not properly authenticate them.

Defendants argue that per *Orr v. Bank of America*, 285 F.3d 764, 777 n.20 (9th Cir. 2002), the documents contained in their exhibits were authenticated by plaintiff's production of the same documents during discovery. Defendants additionally assert that some documents are self-authenticating under Federal Rule of Evidence 902. Plaintiff disputes defendants' interpretation of

1 *Orr*, 285 F.3d 764, arguing that the Ninth Circuit’s decision does not stand for the proposition that  
 2 a party authenticates a document by having produced it. Instead, plaintiff contends that *Orr* applies  
 3 only where the document is offered to show state of mind (a non-hearsay use) (*See Doc. #457 2:7-*  
 4 *13*). Plaintiff argues he submitted “tens of thousands of pages thousands of pages of documents,” and  
 5 mere production of these documents is not sufficient to authenticate them. (*See Doc. #457 2:24-27*).

6 Federal Rule of Evidence 901(a) states “authentication or identification as a condition  
 7 precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in  
 8 question is what its proponent claims.” Federal Rule of Evidence 901(b) includes a non-exclusive  
 9 of list of means by which a document can be authenticated. A generally accepted method of  
 10 authenticating a document not included in the aforementioned list is authentication by production  
 11 during discovery. *See Orr*, 285 F.3d at 777 (citing *Maljack Prods., Inc., v. GoodTimes Home Video*  
 12 *Corp.*, 81 F.3d 881, 889 n.12 (9th Cir. 1996) (concluding documents produced in discovery were  
 13 deemed authentic when offered by the party-opponent))).

14 To authenticate a document through production during discovery, the Ninth Circuit requires:  
 15 1) the producer of the document be identified; **and** 2) the party producing the document admit its  
 16 production. *Orr*, 285 F.3d at 777; *see also Maljack*, 81 F.3d at 889 n.12 (affirming the district court’s  
 17 admission of documents a plaintiff produced because: 1) the plaintiff produced the documents; 2)  
 18 the documents were written on the plaintiff’s letterhead; and 3) the plaintiff did not contest the  
 19 documents’ authenticity). In *Orr*, the Ninth Circuit determined the plaintiff’s exhibit was  
 20 inadmissible as not properly authenticated because she did not identify who produced the memo in  
 21 question and neither the party who authored the memo, nor the entity upon whose letterhead the  
 22 memo was written admitted to producing it. *Id.*

23 Here, plaintiff does not explicitly admit to producing the documents; rather, he implies he  
 24 produced them in his “tens of thousands of pages of documents.” (*See Doc. #457 2:21.*) Plaintiff also  
 25 calls the authenticity of documents he produced into question. To authenticate their exhibits,  
 26 defendants’ attorneys should have submitted affidavits testifying that plaintiff produced the  
 27 documents contained therein during discovery. Absent plaintiff’s denial of production, such an  
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1 affidavit would suffice to authenticate the documents. Defendants failed to attach such affidavits.  
 2 Accordingly, the documents defendants claim were authenticated by production during discovery,  
 3 and which plaintiff neither admits production nor authenticity, are inadmissible.

4 Additionally, defendants' argument that many of their exhibits are self-authenticating under  
 5 Federal Rule of Evidence 902(11) fails because defendants did not attach written declarations to  
 6 authenticate the documents. Fed. R. Evid. 902(11) (records of regularly conducted activity are  
 7 admissible "if accompanied by a written declaration of its custodian or other qualified person  
 8 certifying the record--(A) was made at or near the time of the occurrence of the matters set forth .  
 9 . . .; (B) was kept in the course of regularly conducted activity; and ©) was made by the regularly  
 10 conducted activity as a regular practice."

11 The following documents were properly authenticated and are admissible as evidence.

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 13 Doc #393:

- 14 1. Exhibits ## 1-3 are summary tables prepared for the court's convenience and do not require  
 15 authentication because they are not admitted as evidence.

16 Doc. # 392:

- 17 • Exhibits ## 1-4 are summary tables prepared for the court's convenience and do not require  
 18 authentication because they are not admitted as evidence.
- 19 • Exhibit #16, 2002 Affirmative Action Investigation Documents are authenticated by witness  
 20 Pat McAlinden's deposition (*See* Doc. #448, Ex. #81).
- 21 • Exhibit #29, plaintiff's memo to Patty Chambers dated August 4, 2003, is authenticated by  
 22 an the affidavit of Linda Kuchenbecker (*See* Doc. #448, Ex. #82).
- 23 • Exhibit #32, transcript of plaintiff's grievance hearing with Miller's testimony is  
 24 authenticated by reporter Pamela Longoni's certification.
- 25 • Exhibit #59, Hearing transcript, dated January 18, 2006, is authenticated by the court  
 26 reporter's certification pursuant to Federal Rule of Evidence 902(8).
- 27 • Exhibit #60, plaintiff's e-mail to faculty senate dated October 20, 2005, is authenticated by  
 28 plaintiff's deposition (*See* Doc. #448, Ex. #84).
- Exhibit #61, Reno Gazette newspaper article is a self-authenticating document pursuant to  
 Federal Rule of Evidence 902(6).

1 Doc #393:

- 2 • Exhibit #45, University of Nevada Reno (UNR) accounting documents are authenticated by  
3 the affidavit of UNR fiscal officer Charlene Hart (*See* Doc. #449, Ex. #120).
- 4 • Exhibit #46, animal drug logs are authenticated by the affidavit of UNR administrative  
5 faculty member Laura Millsap (*See* Doc. #449, Ex. #120).
- 6 • Exhibit #48, animal protocol is authenticated by plaintiff's deposition (*See* Doc. #449, Ex.  
7 121).
- 8 • Exhibit #51, report for Wolf Pack Meats dated January 17, 2003, is authenticated by the  
9 affidavit of plant manager for Wolf Pack Meats, Michael Holcomb (*See* Doc. #449, Ex.  
10 #122).
- 11 • Exhibit #56, letter from David Thain to David Thawley is authenticated by the affidavit of  
12 David Thain (*See* Doc. #449, Ex. 124).
- 13 • Exhibit #60, photos of pigs are authenticated by the deposition of Richard Simmonds (*See*  
14 Doc. #449, Ex. 125).
- 15 • Exhibit #67 Institution Animal Care and Use Committee (IACUC) procedures for operation  
16 are authenticated the affidavit of UNR administrative assistant for animal care services Pam  
17 Kentner (*See* Doc. #449, Ex. 127).
- 18 • Exhibit #86, memo from Richard Simmonds is authenticated by his deposition (*See* Doc.  
19 #392, Ex. 43).
- 20 • Exhibit #91 "Letters to the Editor" published in the Reno Gazette newspaper dated January  
21 13, 2005, are self-authenticating pursuant to Federal Rule of Evidence 902(6).
- 22 • Exhibit #92 memo from department chairs to John Lilley are authenticated by the deposition  
23 of Esmail Zanjani (*See* Doc. #449, Ex. 131).
- 24 • Exhibit #94, transcript of hearing dated March 7, 2007, is authenticated pursuant to Federal  
25 Rule of Evidence 902(8).
- 26 • Exhibit #97 Reno Gazette newspaper article is self-authenticating pursuant to Federal Rule  
27 of Evidence 902(6).
- 28 • Exhibit #98 excerpts from the Guide for Care and Use fo Agricultural Animals and  
Agricultural Research and Testing is authenticated pursuant to Federal Rule of Evidence  
902(5).
- Exhibit #116 Reno Gazette newspaper article is self-authenticating pursuant to Federal Rule  
of Evidence 902(6).

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1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff's motion to strike  
2 (#446) be, and the same hereby is, GRANTED in part, and DENIED in part, with only the  
3 aforementioned exhibits admissible as evidence to support defendants' motion for summary  
4 judgment.

5 DATED this 28<sup>th</sup> day of December, 2007.

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9 UNITED STATES DISTRICT JUDGE  
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